

**List of Subjects in 48 CFR Part 553**

Government procurement.

1. The authority citation for 48 CFR Part 553 and Appendix A continues to read as follows:

Authority: 40 U.S.C. 486(c).

**Editorial Note:** The form mentioned above and Appendix A are illustrated and made a part of the regulation. However, the form and Appendix A are not illustrated in the Federal Register or the Code of Federal Regulations. Individual copies may be obtained from the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405.

Dated: January 13, 1989.

Richard H. Hopf III,

*Associate Administrator for Acquisition Policy.*

FR Doc. 89-1544 Filed 1-24-89; 8:45 am]

BILLING CODE 6820-61-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 611 and 675**

[Docket No. 81131-9019]

**Groundfish of the Bering Sea and Aleutian Islands; Foreign Fishing**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final notice of initial specifications of groundfish for 1989; reapportionment of reserves; request for comments.

**SUMMARY:** NOAA announces final specifications of total allowable catches (TACs) and initial domestic annual harvest (DAH) and reserve amounts for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1989 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. The initial specification of the total allowable level of foreign fishing (TALFF) is zero.

This action is necessary to establish harvest limits for groundfish in the 1989 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 5-9, 1988. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

**DATES:** Effective at 0901 Greenwich Mean Time (GMT or 0001 Alaska Standard Time (AST)) on January 1, 1989 through 0900 GMT on January 1, 1990 (2400 AST, on December 31, 1989) or until changed by subsequent notice in the Federal Register.

Comments on the reapportionment part of this notice are invited until February 3, 1989.

**ADDRESS:** Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

**SUPPLEMENTARY INFORMATION:** Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and Part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to annually specify the TAC, initial DAH, and initial TALFF for each target species and the "other species" category as soon as practicable after December 15 (§ 675.20(a)(6)). The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). For 1989, this sum of TACs is equal to 2.0 million mt, as indicated in Table 1.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1989 fishing year was published on November 29, 1988 and comments were invited until December 23, 1988 (53 FR 47998). Eight written comments were received and are summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 5-9, 1988 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1988 meetings, reviewed current biological information about the condition of groundfish stocks in the

BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the 1988 resource assessment document (RAD). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1989 and other biological data from the 1988 draft RAD were provided in the notice of preliminary 1988 specifications (53 FR 47998, November 29, 1988). The Plan Team's revised ABCs were reviewed by the SSC, AP, and Council at its December 1988 meeting. Revisions were made based on the SSC's review to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1989 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1989 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of two million mt. The Secretary finds also that the recommended TACs, to the extent possible under the maximum OY limit, are consistent with socioeconomic goals and objectives of the FMP.

**Apportionment of TAC**

As required under § 675.20(a)(3), the amount of TAC for each species initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. This reserve is not species-specific and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, provided that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals the ITAC minus DAH. For 1989, initial TALFF is zero for all species because the DAH equals ITAC.

Each DAP amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP) category which includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. Under the intent of the domestic processor preference amendments to the Magnuson Act (Pub. L. 95-354), JVP equals DAP minus DAP. In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)). The final TACs, ITACs, reserve, and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1989 are given in Table 1 of this notice.

### P Split Apportionment

Amendment 11 to the FMP established a procedure for splitting the initial JVP apportionment of pollock for each subarea into two parts (52 FR 45966, December 3, 1987). This rule (§ 675.20(b)(3)) provided for Part One to be available for harvest by the JVP fishery on January 15 and Part Two to be withheld until April 15. The initial JVP for pollock in 1989 is small relative to comparable amounts in 1987 and 1988. In anticipation of this decreased initial JVP amount, the Council, at its September 1988 meeting, recommended suspension of the split-apportionment rule for 1989 with the JVP directed fishery for pollock to begin on January 15. The Secretary has taken this action by emergency rule effective January 15 through April 15, 1989 (53 FR 416; January 6, 1989). Therefore, the initial JVP for pollock in Table 1 is available for directed fishing on January 15.

### Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i). This reapportionment subtracts a total of 4,725 mt from reserve and adds it to the JVP species categories as follows: Arrowtooth flounder—700 mt; squid—25 mt; and "other species"—4,000 mt. See Table 2. Species categories receiving reapportioned amounts from the reserve

are species which are likely to be harvested incidentally during JVP directed fishing for other species, and which have TACs that are not expected to be fully used by DAP fisheries. Based on past experience, NMFS anticipates that this reapportionment will not limit DAP fishing in any way. The purpose of this reapportionment is to provide JVP fisheries with the option to retain this bycatch which otherwise would have to be treated in the same manner as prohibited species and be discarded.

### Directed Fishing Prohibition

When the Regional Director determines that the amount of the TAC of any target species or of the "other species" category remaining during the fishing year is necessary in other groundfish fisheries, § 675.20(a)(7) directs the Secretary to prohibit further directed fishing for that species. Directed fishing is defined at § 675.2 but generally allows a fisherman to retain bycatches of that species up to 20 percent of the catch, take, or harvest, or to 20 percent of the fish or fish products onboard his vessel. Such retained bycatches are counted against the remaining TAC for that species. The purpose of this provision is to minimize the waste of groundfish resources from required discarding by slowing the harvest rate of any groundfish species as its total catch approaches its TAC. However, when the catch of a species reaches its TAC (or JVP, for example), any further bycatches of it may not be retained and must be treated in the same manner as a prohibited species (§ 675.20(a)(8)).

The Regional Director, Alaska Region, has determined that the amounts of certain groundfish species apportioned to DAP and JVP are insufficient for directed fishing without excessive waste later in the fishing year from discard as "prohibited species" and that these amounts are necessary for bycatch in fisheries for other groundfish species. These species and the amounts necessary for bycatch in other fisheries are as follows:

DAP sablefish, Bering Sea subarea.	2,380 mt.
JVP arrowtooth flounder .....	700 mt.
JVP squid .....	25 mt.
JVP "other species" .....	4,000 mt.

Therefore, the Secretary prohibits DAP directed fishing for sablefish in the Bering Sea subarea, and JVP directed fishing for arrowtooth flounder, squid, and "other species" in the Bering Sea and Aleutian Islands area for the remainder of the fishing year.

### Comments and Responses

Eight letters of comment were received on the preliminary 1989 specifications published November 29, 1988 (53 FR 47998). Most comments were affected by the Council's actions at its December, 1988 meeting. In summary, commenters expressed one of two basic concerns, either that estimates and apportionments of DAP were inflated and would harm JVP interests, or that DAP could harvest the entire TAC and that premature reapportionment of reserve or DAP to JVP would harm DAP interests. Commenters focused almost exclusively on the apportionment of pollock in the Bering Sea subarea. Comments and responses, therefore, are summarized below according to these two basic concerns.

**Comment 1:** The 1.34 million mt TAC for pollock in the Bering Sea subarea can be fully harvested by the growing DAP fleet. The NMFS projection of the 1989 DAP harvest of pollock is sufficiently high to justify prohibiting JVP directed fishing for this species until the second half of the fishing year. The Council recommendation for initial DAP pollock in the Bering Sea subarea is only about 61 percent of the NMFS-projected DAP harvest. If the entire "reserve" (i.e., 15 percent of the Bering Sea subarea pollock TAC) for this species were reapportioned to DAP, the total would amount to only 73 percent of the projected harvest. There is no justification for an initial JVP that allows JVP directed fishing for this species. The procedure used by the Council to provide for 50,000 mt of pollock in the Bering Sea subarea for JVP directed fishing was inappropriate and violates the requirement to specify DAP before JVP. If implemented, the Council's recommendation creates a risk that DAP will run out of fish (pollock) before the end of the fishing year. NMFS should not make any early-year reapportionments from reserve to JVP to preserve the ability of the DAP sector to harvest pollock throughout the year up to its TAC.

**Response:** There is no question of the rapid growth in harvesting and processing capacity of the DAP sector. The annual DAP harvest of groundfish off Alaska generally has increased an average of 70 percent from 1981 through 1987. The 1988 total groundfish harvest is likely to be about 50 percent greater than that in 1987. In recent years, most of this growth has occurred in the Bering Sea subarea and, specifically, from pollock.

To estimate DAP harvests in a succeeding year, NMFS, Alaska Region,

surveys domestic groundfish processors on their processing capacity and intentions for the coming year. This survey includes shore-based and floating processors and new operations planned for the coming year but not yet operational. Due to the uncertainty of new and planned processing operations, NMFS forecasts or projections of DAP harvests in the coming year tend to liberally favor DAP. For example, the NMFS survey performed in November 1987, for the 1988 fishing year resulted in a projected DAP pollock harvest from the Bering Sea subarea of 614,162 mt. The actual DAP pollock harvest from this area in 1988 is likely to be about 526,162 mt or about 86 percent of the original projection. The Alaska Region refines its projected DAP harvest throughout the year with subsequent inseason surveys and reapportionments surplus DAP to JVP, if indicated.

The projected DAP harvest of Bering Sea subarea pollock in 1989, based on a November 1988 survey of processors, is 1,342,193 mt. The Council apparently was skeptical that domestic processors could actually achieve this level of production which represents an increase in production equivalent to 2.4 times that in 1988. In addition, the Council noted that initial NMFS projections in the past have been about 20 percent higher than actual performance. Decreasing the 1989 projection by this proportion produces an estimated DAP harvest of pollock in the Bering Sea subarea of about 1,074,000 mt. Based on public testimony, the Council further reduced this estimate to 1,045,585 mt. This is a decrease from the NMFS projection of about 22 percent but still provides for DAP growth of nearly two times the likely 1988 harvest of pollock in the Bering Sea subarea. Moreover, reapportionments from reserve to pollock DAP in this area could be made later in the year up to an amount equivalent to the TAC. Such reapportionments could make an additional 201,000 mt of pollock available to DAP fisheries. This would increase the total pollock DAP in the Bering Sea subarea to 1,246,585 mt or almost 2.5 times the likely catch in 1988. NOAA has determined that the Councils' recommended specification of DAP for pollock in the Bering Sea subarea is consistent with the Magnuson Act because it provides ample opportunity in 1989 for domestic processors to achieve their probable production of pollock products, based on a comparison of 1988 NMFS projections with actual 1988 production. Therefore, NOAA considers the Council's

recommendation to be defensible and appropriate.

The Alaska Region will be refining its projections of the DAP harvest of pollock (and other species) during the 1989 fishing year based on in season surveys of domestic processor intentions and capacity. The Secretary will publish reapportionments based on these revised data as provided under § 675.20(b). It is unlikely that DAP harvesters will use the entire potential DAP (initial DAP plus later apportionments from reserve) before the end of the 1989 fishing year.

*Comment 2:* Apportionments to DAP should be made in a manner that is fair and equitable to JVP fishermen. Requests of the DAP sector (from the NMFS survey of domestic processing capacity and intentions) should be critically reviewed and verified. Reevaluations should be made quarterly to determine the probability of surplus DAP, and reapportionment to JVP should be more timely to allow uninterrupted operations.

The DAP sector requests include 25 processor vessels which are not currently operating. Many of these planned operations are unlikely to materialize because of difficulty in securing financing and shipyard commitments. The NMFS should intensively review such projects using more realistic assumptions. Not doing this results in inflated projections of DAP capacity which unfairly excludes American fishermen in joint venture operations from the groundfish fisheries. Inflated projections also result from "double-dipping" on the survey response. The DAP survey lacks transparency which prevents effective commenting and rebuttal of domestic processing claims.

The OY limit should be raised by emergency Secretarial rulemaking. Not raising this limit and accepting the DAP requests at face value will exclude at least 50 percent of the 90 to 125 U.S. catcher vessels working in joint ventures from the fishery, because they do not have a domestic market for their catch. This dislocation constitutes a socio-economic emergency. The rapid capitalization of the DAP fleet also indicates a need to raise the OY limit in combination with a moratorium on new entry into the fishery.

The JVP fishery has 100 percent observer coverage on all vessels receiving JVP catches. This observer coverage provides a source of data important to the biological assessment of the stocks and monitoring of catch rates. This data base will be lost if JVP operations are forced to leave before

implementation of adequate observer coverage in the DAP fleet. If 20 percent observer coverage is considered adequate, then 20 percent of the OY should be earmarked for JVP.

*Response:* NOAA is likewise concerned with the accuracy of its surveys of domestic processing needs and the impact of DAP apportionments on JVP harvesters. It is for these reasons that NOAA thoroughly scrutinizes the results of those surveys and endeavors to accurately assess domestic processor needs and balance fairly the statutory requirement to accommodate DAP processors while recognizing the needs of JVP fishermen.

Estimates of groundfish harvests by planned (but not currently operational) DAP operations are arguably the most uncertain. Another uncertainty arises from survey responses that indicate the production of different kinds of fish products at the same time, an unlikely event due to logistical or marketing impracticalities. The Alaska Region accounts for these and other uncertainties in formulating its projections by discounting, sometimes by significant amounts, the domestic processor requests from the survey. In addition, NMFS, in presenting its projections, cautions the Council regarding these uncertainties and to what extent they have been accounted for. The Council may further adjust the NMFS projections, based on this information and public testimony, in formulating its recommendations to the Secretary. All information and survey results presented to the Council are public and available for comment and rebuttal. The responses of individual firms cannot be made public because of the need to preserve the confidentiality of private businesses.

On several previous occasions, the Council has considered changing the upper limit to the OY range. Its most recent consideration was in 1988 when the Council developed a draft environmental impact statement (DEIS). After reviewing the DEIS, the Council decided against making a recommendation to the Secretary to amend the FMP in this regard.

#### Classification

This action is authorized under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291. The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit

fishermen who would otherwise forego harvestable amounts of groundfish, the 90-day delayed effectiveness provision is also waived. However, interested persons are invited to submit comments in writing on the reapportionment to the above address.

# List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 1989

James W. Brennan,

Assistant Administrator For Fisheries,  
National Marine Fisheries Service.

TABLE 1—FINAL 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA <sup>1</sup>

Species	1989 TAC	Initial TAC <sup>2</sup>	DAP <sup>3</sup>	JVP <sup>4</sup>	DAH <sup>5</sup>	TALFF <sup>6</sup>
Pollock:						
BS	1,340,000	1,139,000	1,045,585	93,415	1,139,000	0
AI	13,450	11,432	11,432	0	11,432	0
Pacific Ocean Perch						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	2,800	2,380	2,380	0	2,380	0
AI	3,400	2,890	2,890	0	2,890	0
Atka Mackerel: BSAI	20,285	17,242	17,242	0	17,242	0
Pacific Cod: BSAI	230,681	196,079	158,613	37,466	196,079	0
Yellowfin Sole: BSAI	182,675	155,274	45,274	110,000	155,274	0
Greenland Turbot: BSAI	8,000	6,800	6,800	0	6,800	0
Arrowtooth Flounder: BSAI	6,000	5,100	5,100	0	5,100	0
Rock Sole: BSAI	90,762	77,148	67,543	9,605	77,148	0
Other Flatfishes: BSAI	75,183	63,906	23,906	40,000	63,906	0
Squid: BSAI	1,000	850	850	0	850	0
Other Species: BSAI	13,264	11,274	11,274	0	11,274	0
Total	2,000,000	1,700,000	1,409,514	290,486	1,700,000	0

<sup>1</sup> Amounts are in metric tons.

<sup>2</sup> Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC - ITAC = 300,000.

<sup>3</sup> DAP = domestic annual processing.

<sup>4</sup> JVP = joint venture processing.

<sup>5</sup> DAH = DAP + JVP.

<sup>6</sup> TALFF = total allowable level of foreign fishing.

TABLE 2—REAPPORTIONMENT OF RESERVE: REVISED 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA <sup>1</sup>

Species	TAC	Initial TAC <sup>2</sup>	DAP <sup>3</sup>	JVP <sup>4</sup>	DAH <sup>5</sup>	TALFF <sup>6</sup>
Pollock:						
BS	1,340,000	1,139,000	1,045,585	93,415	1,139,000	0
AI	13,450	11,432	11,432	0	11,432	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	2,800	2,380	2,380	0	2,380	0
AI	3,400	2,890	2,890	0	2,890	0
Atka Mackerel: BSAI	20,285	17,242	17,242	0	17,242	0
Pacific Cod: BSAI	230,681	196,079	158,613	37,466	196,079	0
Yellowfin Sole: BSAI	182,675	155,274	45,274	110,000	155,274	0
Greenland Turbot: BSAI	8,000	6,800	6,800	0	6,800	0
Arrowtooth Flounder: BSAI	6,000	5,100	5,100	0	5,100	0
Change: Add	0	0	0	700	700	0
Revised	6,000	5,100	5,100	700	5,800	0
Rock Sole: BSAI	90,762	77,148	67,543	9,605	77,148	0
Other Flatfishes: BSAI	75,183	63,906	23,906	40,000	63,906	0
Squid: BSAI	1,000	850	850	0	850	0
Change: Add	0	0	0	25	25	0
Revised	1,000	850	850	25	875	0
Other Species: BSAI	13,264	11,274	11,274	0	11,274	0
Change: Add	0	0	0	4,000	4,000	0
Revised	13,264	11,274	11,274	4,000	15,274	0
Totals	2,000,000	1,700,000	1,409,514	290,486	1,700,000	0
Revised	0	0	0	4,725	4,725	0

TABLE 2—REAPPORTIONMENT OF RESERVE: REVISED 1989 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUND FISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA<sup>1</sup>—Continued

Species	TAC	Initial TAC <sup>2</sup>	DAP <sup>3</sup>	JVP <sup>4</sup>	DAH <sup>5</sup>	TALFF <sup>6</sup>
Revised.....	2,000,000	1,700,000	1,409,514	295,211	1,704,725	0

<sup>1</sup> Amounts are in metric tons.

<sup>2</sup> Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC—ITAC = 300,000.

<sup>3</sup> DAP = domestic annual processing.

<sup>4</sup> JVP = joint venture processing.

<sup>5</sup> DAH = DAP + JVP.

<sup>6</sup> TALFF = total allowable level of foreign fishing.

<sup>7</sup> The total increase in JVP and DAH is subtracted from the reserve. Hence, the remaining reserve = 300,000—4,725 = 295,275.